

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of Petition for Declaratory Ruling To)	
Clarify the Applicability of the IntraMTA Rule to IXC)	
Traffic and Confirm That Related IXC Conduct Is)	CC Docket No. 01-92
Inconsistent with the Communications Act of 1934, as)	WC Docket Nos. 10-90, 14-228
Amended and the Commission's Implementing Rules)	
and Policies)	

COMMENTS OF MINNESOTA TELECOM ALLIANCE

The Minnesota Telecom Alliance (MTA)¹ submits these Comments pursuant to the Commission's December 10, 2014 Public Notice.² The MTA supports the Petition for Declaratory Ruling of the LEC Petitioners³ (Petition) and submits that additional reasons and requirements preclude interexchange carriers (IXCs) from invoking the benefits of the IntraMTA Rule unless and until:

- (1) The Commission issues an order extending the IntraMTA Rule to IXCs' carriage of IntraMTA traffic; and
- (2) Thereafter, an IXC seeking the benefit of the IntraMTA Rule is required to cooperate to provide and conduct traffic studies and obtain samples from which a reasonable estimate can be made of the amounts of IntraMTA traffic being exchanged

These Comments will focus on those additional reasons and requirements.

¹ The MTA is a trade association representing the interests of over 85 small, medium, and large companies that provide advanced telecommunications services, including voice, data and video to consumers throughout rural, suburban, and urban Minnesota. MTA members CenturyLink, Consolidated Communications (including Mankato Citizens Telephone Company and Mid-Communications, Inc.), and TDS Telecommunications Corporation (including Arvig Telephone Company, LLC, Bridge Water Telephone Company, LLC, Mid-State Telephone Company, LLC, and Winsted Telephone Company, LLC do not join in these comments

² Public Notice, Wireline Competition Bureau Seeks Comment on Petition For Declaratory Ruling Regarding Applicability of The IntraMTA Rule to LEC-IXC Traffic, DA 14-1808 (Dec. 10, 2014).

³ Petition for Declaratory Ruling of the LEC Petitioners (Nov. 10, 2014).

INTRODUCTION AND SUMMARY

Application of the IntraMTA Rule to compensation between commercial mobile radio service (CMRS) carriers and LECs is clear and explicit under both the *Local Competition Order*⁴ and *USF/ICC Order*⁵ (collectively the *Orders*). The Commission, however, has never extended the IntraMTA Rule to include compensation for IntraMTA traffic between IXC and LECs. It therefore would be incorrect as a matter of policy and law for the Commission to do anything but affirm that the existing IntraMTA Rule does not apply – and never has applied – to compensation between LECs and IXCs for the exchange of IntraMTA traffic. If and when the Commission extends the IntraMTA Rule to apply to compensation between IXCs and LECs, that change must be limited to prospective application.

Moreover, if the Commission were to extend the IntraMTA Rule to compensation between IXCs and LECs, then, under the Commission's prevailing standards,⁶ IXCs would need to cooperate with LECs to make a reasonable estimate or determination of the amounts of IntraMTA traffic to which reciprocal compensation would apply. IXC cooperation is essential because of the information available to the IXCs. The IXCs that may perform intermediate carriage of IntraMTA traffic presumably have direct information regarding the quantities of

⁴ *Implementation of Local Competition Provisions of the Telecommunications Act of 1996 and Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, First Report and Order, 11 FCC Rcd 15499 (1996) [*hereinafter Local Competition Order*].

⁵ *Connect America Fund*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011) [*hereinafter USF/ICC Order*].

⁶ *Local Competition Order* ¶ 1044 reads in part:

We recognize that, using current technology, it may be difficult for CMRS providers to determine, in real time, which cell site a mobile customer is connected to, let alone the customer's specific geographic location. This could complicate the computation of traffic flows and the applicability of transport and termination rates, ... We conclude, however, that it is not necessary for incumbent LECs and CMRS providers to be able to ascertain geographic locations when determining the rating for any particular call at the moment the call is connected. We conclude that parties may calculate overall compensation amounts by extrapolating from traffic studies and samples. (Emphasis added.)

IntraMTA traffic the IXC's may be carrying as a result of: (1) contractual arrangements to carry traffic for other carriers, including CMRS providers; and (2) the IXC's' location in the network.

Sprint has denied any obligation to take any action or to provide any information to LECs, even the basic fact that IntraMTA traffic was being carried over access trunks.⁷ However, that stance cannot be squared with the Commission's prior decisions (in the context of IntraMTA compensation between CMRS providers and LECs) requiring cooperation by the IXC's in determining the levels of IntraMTA traffic.⁸ It is also inconsistent with basic commercial practices which rely on timely delivery of necessary information, such as the types and quantities of goods or services being exchanged.

Accordingly, even if the Commission decides to extend the IntraMTA Rule to include compensation between IXC's and LECs, there is no basis apply such a decision to previously exchanged IntraMTA traffic. Further, on a prospective basis, such a decision should not apply before IXC's extend cooperation in conducting traffic studies and obtaining samples of IntraMTA traffic, consistent with the cooperation required for compensation between CMRS providers and LECs under the *Local Competition Order*.

Specifically, although there are multiple federal lawsuits and other disputes pending between IXC's and hundreds of LECs, there is no indication that prior to 2014, IXC's: (1) had taken any steps or made any effort to initiate reciprocal compensation arrangements for IntraMTA traffic with any small LECs; or (2) had taken any steps or made any effort to cooperate with any small LECs (by requesting or providing information) to estimate or

⁷ See Sprint's Memorandum in Opposition to the Small LECs' Motion to Dismiss, Sprint Comm. Co. L.P. v. Qwest Corp., et al, 14-cv-01387-MJD-LIB, (Doc. 99) at 5, n. 5 (D. Minn. Sept 5, 2014), *transferred to the United States District Court for the Northern District of Texas*, In re: IntraMTA Switched Access Charges Litigation, 3:14-MD-2587-D.

⁸ *Local Competition Order* ¶ 1044.

determine the amounts of IntraMTA traffic that the IXC's may have been exchanging with small LEC's.⁹ To the contrary, small LEC's and IXC's have been exchanging IntraMTA traffic under clear terms for more than 16 years without any hint of disagreement by the IXC's. Thus, even if the Commission had previously determined that the IntraMTA Rule applied to IntraMTA traffic exchanged between IXC's and small LEC's, there would be no basis to do so for any such traffic previously exchanged over access trunks and knowingly paid for by IXC's.

DISCUSSION

1. The *Local Competition Order* and *USF/ICC Order* Clearly Addressed CMRS-LEC Compensation For IntraMTA traffic, But Did Not Address IXC-LEC Compensation.

Both the *Local Competition Order* and the *USF/ICC Order* expressly address compensation between LEC's and CMRS providers for IntraMTA traffic. The *Local Competition Order* established the basic principle that reciprocal compensation applies between LEC's and CMRS providers for IntraMTA traffic exchanged between them. The *USF/ICC Order* clarified that the mechanism of exchange between CMRS providers and LEC's, whether direct or through intermediaries, does not affect the compensation arrangements between the CMRS providers and LEC's. Neither the *Local Competition Order* nor the *USF/ICC Order*, however, support the application of reciprocal compensation between IXC's and LEC's for IntraMTA traffic, much less a unilateral and retroactive implementation of such a change by the IXC's.

A. The *Local Competition Order* did not authorize any change in compensation between IXC's and LEC's for IntraMTA traffic.

⁹ In contrast, many CMRS providers have entered into agreements with small LEC's which address IntraMTA traffic. Further, Qwest, a LEC carrying intraLATA traffic, sought and obtained a determination concerning IntraMTA traffic from the Iowa Utilities Board. Opportunities were available to IXC's who believed that the IntraMTA Rule was applicable to IntraMTA traffic that they may be carrying.

The *Local Competition Order* established the basic requirements for compensation arrangements between CMRS carriers and LECs for IntraMTA traffic,¹⁰ and the numerous references to “LECs” and “CMRS providers” demonstrate that this part of the *Local Competition Order* was directed to solely to arrangements, including compensation, between CMRS carriers and LECs.¹¹ In sharp contrast to the discussion of CMRS providers, there is a virtually complete absence of references to IXC in the portion of the *Local Competition Order* dealing with CMRS traffic other than the statement that access charges apply to traffic between CMRS providers and LECs that is carried by IXCs under the Commission’s existing practice:

Under our existing practice, most traffic between LECs and CMRS providers is not subject to interstate access charges unless it is carried by an IXC, with the exception of certain interstate interexchange service provided by CMRS carriers, such as some "roaming" traffic that transits incumbent LECs' switching facilities, which is subject to interstate access charges.¹²

There is no statement in the *Local Competition Order* negating the ongoing application of the “existing practice,” much less any indication that the *Local Competition Order* somehow categorically exempted IXCs from all payment obligations. Accordingly, there is no reasonable construction of this part of the *Local Competition Order* could lead to the conclusion that the Commission exempted IXCs from all payment obligations.

¹⁰ *Local Competition Order* at ¶¶ 1041-1045.

¹¹ See, e.g., *Local Competition Order* at ¶ 1030 (“A wide range of commenters also contend that reciprocal compensation should apply to arrangements between CMRS providers and LECs.”); ¶ 1034 (“By contrast, reciprocal compensation for transport and termination of calls is intended for a situation in which two carriers collaborate to complete a local call.”); ¶ 1041 (“Although section 252(b)(5) does not explicitly state to whom the LEC’s obligation runs, we find that LECs have a duty to establish reciprocal compensation arrangements with respect to local traffic originated by or terminating to any telecommunications carriers. CMRS providers are telecommunications carriers and, thus, LEC’s reciprocal compensation obligations under section 251(b)(5) apply to all local traffic transmitted between LECs and CMRS providers.”).

¹² *Local Competition Order* at ¶ 1043 (emphasis added).

Specifically, no replacement mechanism is identified or described in the *Local Competition Order*, much less authorized, for “traffic between LECs and CMRS providers ... carried by an IXC.”¹³ As a result, no reasonable construction of the *Local Competition Order* would support an argument that the *Local Competition Order* changed the compensation arrangements between IXCs and LECs for any IntraMTA traffic being carried by IXCs. There is even less support for an argument that the *Local Competition Order* was so clear that LECs were under some obligation to unilaterally implement a radical change to the “existing practice.”¹⁴

B. The *USF/ICC Order* clarified remaining issues pertaining to CMRS-LEC compensation, but did not address IXC-LEC Compensation.

Like the *Local Competition Order*, the *USF/ICC Order* focused on compensation between CMRS providers and LECs and did not address, much less make clear, compensation between “intermediate carriers” and LECs. If the Commission intended to address the topic of compensation between intermediate carriers and LECs in the *USF/ICC Order*, the Commission would certainly have specifically identified and described that issue, as it did with respect to compensation between CMRS providers and LECs

The *USF/ICC Order* referred to the *Local Competition Order*¹⁵ and addressed and resolved several issues of interpretation pertaining to the IntraMTA Rule.¹⁶ While traffic carried by intermediate carriers was identified as one of the ways that IntraMTA traffic was exchanged between CMRS providers and LECs, the context of the discussion makes it clear that the subject of the discussion in the *USF/ICC Order* remained limited to compensation between CMRS providers and LECs as to that subpart of total IntraMTA traffic.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *USF/ICC Order* at ¶ 1003.

¹⁶ *Id.* at ¶¶ 1003-1008.

The only one reference in the *USF/ICC Order* to intermediary carriers in the discussion of the IntraMTA Rule occurs in paragraph 1007. That paragraph does not indicate, much less state, that reciprocal compensation would apply to compensation between IXC and LECs:

In a further pending dispute, some LECs have argued that if completing a call to a CMRS provider requires a LEC to route the call to an intermediary carrier outside the LEC's local calling area, [FN 2129] the call is subject to access charges, not reciprocal compensation, even if the call originates and terminates within the same MTA. [FN 2130] One commenter in this proceeding asks us to affirm that such traffic is subject to reciprocal compensation. [FN 2131]¹⁷ We therefore clarify that the intraMTA rule means that all traffic exchanged between a LEC and a CMRS provider that originates and terminates within the same MTA, as determined at the time the call is initiated, is subject to reciprocal compensation regardless of whether or not the call is, prior to termination, routed to a point located outside that MTA or outside the local calling area of the LEC. [FN 2132] Similarly, intraMTA traffic is subject to reciprocal compensation regardless of whether the two end carriers are directly connected or exchange traffic indirectly via a transit carrier. [FN 2133]¹⁷

Further, the footnotes in paragraph 1007 clarify that the "further pending dispute" addressed by the Commission focused on the compensation between the CMRS providers and LECs with respect to traffic carried by an intermediary carrier, not compensation between an IXC and LEC.

Footnote 2129 provides important insight regarding the dispute being addressed by the Commission in the *USF/ICC Order*, which was a dispute between CMRS providers and LECs as to whether the intraMTA rule applied to traffic that, while originating and terminating in a single MTA, may travel outside of the MTA in the routing process. Footnote 2129 described the conditions under which this situation occurs:

This occurs when the LEC and CMRS provider are "indirectly interconnected," i.e. when there is a third carrier to which they both have direct connections, and which is then used as a conduit for the exchange of traffic between them.¹⁸

¹⁷ *Id.* at ¶ 1007 (emphasis added).

¹⁸ *Id.* at ¶ 1007, n. 2129 (emphasis added).

The LEC comments cited in footnote 2130 show that the topic being addressed in paragraph 1007 was compensation *between CMRS providers and LECs*.¹⁹ Similarly, the T-Mobile comments cited in footnote 2131 make no reference to compensation between IXCs and LECs.²⁰

Footnote 2132 also indicates that the discussion in paragraph 1007 was limited to compensation *between LECs and CMRS providers* and that the reference to routing through IXCs simply confirmed that the compensation between LECs and CMRS providers was not altered by such routing:

Although Vantage Point questions whether the intraMTA rule is feasible when a call is routed through interexchange carriers, many incumbent LECs have already, pursuant to state commission and appellate court decisions, extended reciprocal compensation arrangements with CMRS providers to intraMTA traffic without regard to whether a call is routed through interexchange carriers.²¹

The Sprint-Nextel comments cited in Footnote 2133 were similarly addressed to compensation between CMRS providers and competitive LECS and incumbent LECs, and did not address compensation between IXCs and LECs. Importantly, the footnote is associated with the phrase (in paragraph 1007) “regardless of whether *the two end carriers* are directly connected or exchange traffic indirectly via a transit carrier.”²² This continued focus on compensation between “the two end carriers” (the LECs and the CMRS providers) is consistent with the

¹⁹ See Letter from Sylvia Lesse, Counsel to the Missouri Companies, to William F. Caton, Acting Secretary, Federal Communications Commission, WT Docket No. 01-316 and CC Docket No. 01-92, (Addressing disputes between “wireless carriers” and LECs) (Mar. 22, 2002); Letter from W.R. England, III, Counsel for Citizen Telephone Company of Missouri, *et al*, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-92, 96-45 and 95-116, Attach. page 2 (Addressing disputes between “wireless carriers” and LECs in Missouri)(Oct. 31 2003); Letter from Glen H. Brown, Counsel to Great Plains Communications, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-92, (Addressing a dispute with Western Wireless.)(Sept. 23, 2003).

²⁰ Comments of T-Mobile USA, Inc., CC Docket No. 01-92 *et al*, page 11 (Aug. 24, 2011)

²¹ *USF/ICC Order* at ¶ 1007, n. 2132 (emphasis added). To the extent the VantagePoint comments address IXC rates, they indicate that IXC’s are billed at access rates for delivering CMRS calls to LECs. See Letter from Larry D. Thompson, Vantage Point Solutions, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-92 *et al*, at 3 and Figure 3 (Oct. 21, 2011).

²² *USF/ICC Order* at ¶ 1007 (emphasis added).

Commission's overall focus in paragraph 1007 of clarifying the compensation between CMRS providers and LECs when an intermediary is involved.

As noted above, if the Commission intended to address the topic of compensation between intermediate carriers and LECs in the *USF/ICC Order*, the Commission would certainly have specifically identified and described that issue, as it did with respect to compensation between CMRS providers and LECs. The contrast between the specific discussion of compensation between CMRS providers and LECs and the absence of any reference to compensation between intermediate carriers and LECs leads to the conclusion that the *USF/ICC Order* was not intended to address that issue.

Finally, there is no indication that any IXC's commented on the IntraMTA Rule issues explored in the *USF/ICC Order*.²³ The complete absence of any references to IXC comments in relation to the IntraMTA Rule underscores the conclusion that the *USF/ICC Order* was limited to IntraMTA compensation between CMRS providers and LECs and did not address IntraMTA compensation between IXC's and LECs.

Accordingly, there is no basis to conclude that the *USF/ICC Order* referred to compensation between LECs and IXC's, much less that the *USF/ICC Order* extended the IntraMTA Rule to compensation between LECs and IXC's.

2. Even if the IntraMTA Rule had been extended to apply to IXC-LEC compensation, the IXC's have not provided the cooperation required of any carrier invoking the IntraMTA Rule.

As previously discussed, neither the *Local Competition Order* nor the *USF/ICC Order* extended the IntraMTA Rule to compensation between IXC's and LECs. Further, even if the Commission had extended IntraMTA Rule to compensation between IXC's and LECs, the IXC's

²³ See *USF/ICC Order* at ¶¶ 1003-1008 and accompanying footnotes (which do not include any references to comments from IXC's).

have not met the requirement of cooperation that applies to *any carrier* seeking to invoke the IntraMTA Rule to establish compensation for IntraMTA traffic. Specifically:

1. Any carrier seeking the benefit of the IntraMTA Rule is required to cooperate in conducting traffic studies and obtaining samples needed to measure or estimate the amounts of IntraMTA traffic;
2. IXC's have information that is essential to conducting meaningful traffic studies and obtaining representative samples to determine IntraMTA traffic levels, if actual data cannot be provided;
3. IXC's did not take any action to cooperate with small LEC's in conducting traffic studies or obtaining samples of IntraMTA traffic prior to 2014; and
4. Unless and until the IXC's take such steps, the IntraMTA Rule cannot be applied to IntraMTA traffic carried over access trunks.

The *Local Competition Order* establishes a duty for any "party" seeking to establish reciprocal compensation for IntraMTA Traffic to cooperate in establishing "overall compensation amounts by extrapolating from traffic studies and samples."²⁴ Accordingly, even if the Commission had extended the IntraMTA Rule to apply to compensation between IXC's and LEC's, the IXC's would have been required to cooperate in determining the amounts of IntraMTA traffic they may have been carrying, including sharing necessary information and conducting necessary traffic studies and sampling.

The requirement of cooperation would necessarily apply when and if the IntraMTA Rule is extended to include compensation between LEC's and IXC's because there is no basis to conclude that the Commission would have required CMRS carriers seeking reciprocal compensation to engage in studies and samples while exempting IXC's from the same

²⁴ *Local Competition Order* at ¶ 1044.

obligations.²⁵ Specifically, the *Local Competition Order* clearly recognized the difficulty of distinguishing CMRS traffic that is IntraMTA traffic from CMRS traffic:

We recognize that, using current technology, it may be difficult for CMRS providers to determine, in real time, which cell site a mobile customer is connected to, let alone the customer's specific geographic location. This could complicate the computation of traffic flows and the applicability of transport and termination rates, given that in certain cases, the geographic locations of the calling party and the called party determine whether a particular call should be compensated under transport and termination rates established by one state or another, or under interstate or intrastate access charges.²⁶

The *Local Competition Order* also recognized that a calculation of overall compensation could provide a viable substitute for direct measurements on a call-by-call basis, but that the parties to IntraMTA traffic compensation arrangements would need to participate in efforts to estimate (extrapolate) from conducting traffic studies and obtaining samples:

We conclude, however, that it is not necessary for incumbent LECs and CMRS providers to be able to ascertain geographic locations when determining the rating for any particular call at the moment the call is connected. We conclude that parties may calculate overall compensation amounts by extrapolating from traffic studies and samples.²⁷

The same requirement of good faith cooperation that the Commission established directly for LECs and CMRS providers would apply with no less force to IXC's if they seek reciprocal compensation for IntraMTA traffic as a substitute for the Commission's "existing practice" (i.e. applying access charges to all traffic exchanged by IXC's) at the time of the *Local Competition Order*.²⁸ Specifically, there is no basis to conclude that the Commission would have imposed more requirements (cooperation in performing traffic studies and making estimates of traffic volumes) on CMRS providers (who are clearly the primary beneficiaries of the IntraMTA Rule)

²⁵ See *USF/ICC Order* at ¶ 1007, n. 2132 (reaffirming the importance of using traffic studies and samples to establish reciprocal compensation levels).

²⁶ *Local Competition Order* at ¶ 1044 (internal footnotes omitted).

²⁷ *Id.* at ¶ 1044 (emphasis added).

²⁸ *Id.* at ¶ 1043.

than would be imposed on IXCs. Certainly, there is no basis to provide a windfall benefit to IXCs who have totally failed to meet the basic requirement of cooperation and information sharing that is at best a substitute for actual measurement of traffic.

Further, such cooperation and information sharing is essential on a *contemporaneous, not after-the-fact*, basis because traffic patterns change over time as a result of: (1) changes in end-user calling preferences; and (2) rearrangement of contracts and networking arrangements between carriers. An after-the-fact approach could not reasonably reflect levels of IntraMTA traffic that will vary as a result of such changing calling patterns and changing network arrangements. As a result, the IntraMTA Rule could not be reasonably extended to IXCs on a retroactive basis (for any IntraMTA traffic previously exchanged) prior to the time that necessary cooperation and information was provided by the IXCs.

3. The *Local Competition Order* and *ICC/USF Order* do not preclude carriers from accepting alternative compensation arrangements to the IntraMTA Rule.

The Commission's reciprocal compensation rules have consistently followed a pattern of establishing guidelines and default levels for compensation while allowing carriers to enter into reciprocal compensation arrangements that establish other compensation levels. The same is true of the *Local Competition Order* and *ICC/USF Order*. The *Orders* did no more than set "default" levels of reciprocal compensation. Accordingly, to the extent *Orders* addressed IXC carriage of IntraMTA traffic, the *Orders* did not prohibit the IXCs from knowingly and voluntarily accepting other compensation arrangements pertaining to the exchange of IntraMTA traffic.

The *Local Competition Order* and *ICC/USF Order* followed this pattern and allowed carriers to accept alternative compensation arrangements, as explained in the *T-Mobile Declaratory Ruling*²⁹ where the Commission stated:

Although section 20.11 and the Commission's reciprocal compensation rules establish default rights to intercarrier compensation, they do not preclude carriers from accepting alternative compensation arrangements.³⁰

Based on the ability of carriers to accept alternative compensation arrangements, the Commission concluded that, prior to the Commission's explicit prohibition in Rule 20.11(e), 47 C.F.R. § 20.11(e), the default rights to intercarrier compensation available to CMRS providers did not preclude application of wireless termination tariffs.³¹

The Commission noted that CMRS providers were allowed to make alternative compensation arrangements, including accepting service by LECs under the terms of state tariffs:

By routing traffic to LECs in the absence of a request to establish reciprocal or mutual compensation, CMRS providers accept the terms of otherwise applicable state tariffs.³²

The CMRS carriers were held to their decision because the LECs and the terminating tariffs did not coerce the CMRS providers or violate the CMRS providers' rights to seek alternative compensation arrangements:

These tariffs do not prevent CMRS providers from requesting reciprocal or mutual compensation at the rates required by the Commission's rules. Accordingly, wireless termination tariffs do not violate a CMRS provider's rights to reciprocal or mutual compensation under section 251(b)(5) and section 20.11 of the Commission's rules.³³

²⁹ *T-Mobile et al. Petition for Declaratory Ruling Regarding Incumbent LEC Wireless Termination Tariffs*, Declaratory Ruling and Report and Order, 20 FCC Rcd 4855 at ¶¶ 9-16.

³⁰ *Id.* at ¶ 12.

³¹ *Id.*

³² *Id.*

³³ *Id.*

The rationale from the *T-Mobile Declaratory Ruling* applies equally in this case to the IXCs' voluntary use of access trunks and payment of access rates. There was no prohibition on the IXCs accepting alternative compensation arrangements. The IXCs routed their traffic to access trunks and made no request to establish reciprocal or mutual compensation arrangements under the IntraMTA Rule, nor did they provide the relevant information necessary to establish reciprocal compensation. As a result, the IXCs accepted the terms of those tariffs. The LECs tariffs similarly did not prevent the IXCs from seeking alternative compensation arrangements, and it is clear that the IXCs recent litigation and self-help clearly show that the IXCs are not intimidated by the LECs, much less by the small LECs.

There is also no apparent policy basis to provide more protection to IXCs who may choose to mix IntraMTA traffic with access traffic carried on access trunks than was provided to CMRS providers in the *T-Mobile Declaratory Ruling* or than is provided to any other carriers who establish reciprocal compensation arrangements. Those CMRS providers were held to their knowing and voluntary decisions to use services and pay compensation under the terms of LEC tariffs. The same result should apply to any IntraMTA traffic carried by IXCs prior to the time that they provide the cooperation and sharing of information required of any carrier seeking the benefits of the IntraMTA Rule.

CONCLUSION

For the reasons set forth above, the Commission should find that neither the *Local Competition Order* nor the *ICC/USF Order* has extended the IntraMTA Rule to compensation between IXCs and LECs. The Commission should also affirm the obligation of parties seeking reciprocal compensation for IntraMTA traffic, including any IXCs, to cooperate and provide their counterparties (the LECs) with contemporaneous, not after-the-fact, traffic information,

studies, and samples from which reasonable estimates of the amounts of IntraMTA traffic (and thus compensation levels for such amounts of traffic) can be determined. Finally, the Commission should also affirm that the *Local Competition Order* and *ICC/USF Order* followed the Commission's well established pattern of allowing carriers, including IXCs carrying IntraMTA traffic, to deviate from compensation guidelines and default compensation levels if they knowingly and willingly choose to do so.

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Respectfully submitted

MINNESOTA TELECOM ALLIANCE

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By Brent J. Christensen,
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